

1 MR. BERFIELD: Well, the settlement was that she was
2 to withdraw her letter of inquiry and not to -- it's one thing
3 to write a letter. It's quite another thing to pursue it.

4 JUDGE LUTON: Was the letter ever withdrawn by Ms.
5 Randolph?

6 MR. BERFIELD: I do not have information on that. I
7 guess the Commission files would reflect that.

8 JUDGE LUTON: I really have -- okay. I have --

9 MR. MILLER: To the best of my knowledge it was not.

10 JUDGE LUTON: It was not. I have considerable doubt
11 about whether, whether what happened here was contemplated by
12 the rule which deals with if payments are made to persuade
13 people from filing Petitions to Deny and other, other such
14 things. I doubt it, particularly since here, here the letter
15 had already been written. It was in the Commission's
16 possession and it's still there insofar as we know. So I --
17 but I guess because that all predated the agreement -- what?
18 What does that mean? It doesn't mean anything that I can
19 understand. I really doubt, Mr. Berfield, that this rule is
20 intended to embrace the kind of situation that we have here,
21 but I don't know. What were some of the other points about
22 why I should reject this thing?

23 MR. KRAUS: The Commission has ruled on it.

24 JUDGE LUTON: The Commission has ruled. It had all
25 these facts before it.

1 MR. KRAUS: All of them.

2 JUDGE LUTON: And --

3 MR. KRAUS: If Mr. Berfield doesn't like the way the
4 Commission ruled I don't blame him, but it did rule. He's got
5 an appeal pending.

6 JUDGE LUTON: It just didn't make anything out of
7 these. On that basis in particular I am going to reject the
8 offering on the fact that the Commission has ruled already and
9 it ruled in such a way that these allegations mean nothing
10 and, even beyond that, if I had to sit down and think about
11 it, write a paper about it, I'm pretty sure I would conclude
12 that the Commission's rule doesn't accomplish situations of
13 this kind in its prohibition. I'm satisfied that that's a
14 correct ruling and that is my ruling. 11 is rejected.

15 MR. MILLER: And 12, Your Honor?

16 JUDGE LUTON: And 12 which goes with it.

17 (The documents that were previously
18 marked as Allegheny Exhibits No. 11
19 and 12 were rejected.)

20 JUDGE LUTON: That leaves us with McDonald.

21 MR. BERFIELD: I would offer then the statement of
22 Lois McDonald as a community witness, Allegheny Exhibit 13.

23 MR. MILLER: Your Honor, the operative paragraph
24 here is, is 3 which would in some circumstances perhaps be an
25 appropriate finding for Your Honor to make based on analysis

1 of a whole lot of evidence. A mere conclusion that our
2 programming has demonstrated a lack of concern for the
3 Pittsburgh community, it doesn't seem to add much --

4 JUDGE LUTON: It isn't evidence. It isn't anything
5 that I can usefully consider. I mean, what would I do with a
6 person's statement there which the person simply says your
7 statement -- your station hasn't offered programming without
8 some detail?

9 MR. BERFIELD: Well, Your Honor, I would point that
10 she was Chairperson of the Communications Commission for the
11 Pennsylvania --

12 JUDGE LUTON: Right. Mr. Berfield, I'm not saying
13 the lady doesn't know what she's talking about. She might be
14 right. She might be -- or at least I might agree with her if
15 I had some basis on which to agree with her, but as it is the
16 statement doesn't tell me anything except it gives her
17 conclusion.

18 MR. BERFIELD: Well, I mean, these, these community
19 witness statements that they submitted are replete with
20 conclusions and the way we test those on cross-examination.
21 I'll present her with Mr. Pitts.

22 JUDGE LUTON: Are you going to present her?

23 MR. BERFIELD: Of course.

24 JUDGE LUTON: All right. Bring her on in. We'll
25 talk about it then. I'm going to overrule the objection.

1 Bring her in. We'll see what she has to say.

2 MR. ZAUNER: Your Honor, is Mr. Berfield going to
3 bring her -- bring them in here to testify or is he going to
4 --

5 MR. BERFIELD: Well, no. The community witnesses
6 under the schedule will be held in Pittsburgh. Thank you,
7 Your Honor.

8 JUDGE LUTON: This is a community witness, huh?
9 Okay.

10 MR. BERFIELD: Yes, Your Honor. I believe that
11 concludes our exhibits with the exception of those --

12 JUDGE LUTON: 13 is received subject to the witness
13 herself showing up, the same as is the case with Mr. Pritts.

14 MR. BERFIELD: Pitts, yes, sir.

15 (The document that was previously
16 marked as Allegheny Exhibit No. 13
17 was received into evidence.)

18 MR. MILLER: Your Honor, may I ask a question about
19 the procedures?

20 JUDGE LUTON: Yes.

21 MR. MILLER: If we do not cross-examine either of
22 these two witnesses and the record is left merely with the
23 unadorned declaration, do you propose to allow Allegheny to
24 expand upon this information by taking her through direct
25 examination?

1 JUDGE LUTON: No. No, I don't.

2 MR. MILLER: Thank you, Your Honor.

3 MR. BERFIELD: I think with the exception of the
4 exhibits on which we reserved and we're going to brief that
5 would conclude our exhibits at this time, Your Honor.

6 JUDGE LUTON: All right.

7 MR. KRAUS: And those exhibits I think are only two
8 at this point.

9 JUDGE LUTON: There are two. There are two. I
10 forgot what the first one was.

11 MR. KRAUS: 3 and 4 I believe, Your Honor. Yeah.
12 The first is the arbitrator's decision. The second is the
13 court decision upholding the arbitrator's decision.

14 MR. BERFIELD: 3 and 4, Your Honor.

15 JUDGE LUTON: That's right. Yeah. We've gotten
16 through the rest of them and I'm going to have -- again, with
17 respect to 3 and 4, the thing that I'm asking for is the
18 parties' views or other parties' views, whichever is correct
19 at this time of day, on whether or not the Liz Randolph matter
20 in this proceeding can count for anything, especially since
21 it's not going to count for any violation of the Commission's
22 rule. That's the question, isn't it, at least that's one that
23 I need to have addressed? And I apologize for the
24 inconvenience here. The parties come in here rightfully
25 expecting rulings on all of this stuff and here they're not

1 getting a ruling. Instead they're being asked to do some work
2 and help the decision maker make a ruling. Well -- I
3 apologize, but -- especially because the matter was raised
4 within my office and differences of opinion have arisen about
5 the question which is another reason why I'd like to have the
6 parties address it for me since I'm going to have to decide it
7 myself and for myself. So we will meet here again on Tuesday
8 afternoon at 1:00 at which time I will announce my ruling, and
9 by that time I will have received arguments from the three
10 participants in the case about what ought to be the proper
11 disposition of 3 and 4, arbitrator's decision and the District
12 Court decision on what we've called the Liz Randolph matter.
13 All right?

14 MR. MILLER: Yes, Your Honor, and my understanding
15 is that whatever we submit is to focus not on reargument of
16 the matters that we have gone over too many times this
17 morning, but on what precedent there is that my assist you
18 --

19 JUDGE LUTON: That's the way I would like to have
20 it. However, it may be somewhat difficult to remember just
21 what the arguments were. You can do it anyway you want, but
22 I'm particularly interested in precedent. If, indeed, there
23 is something out there I'd like to know about it and if
24 there's isn't anything out there, I'd like to know that, too,
25 but I don't want to say don't reargue what you've already

1 argued. Feel free to do that, too, if you wish. If you find
2 it necessary in making your point, feel you need to say it
3 again in order to get it through my thick skull, that's okay.

4 MR. BERFIELD: Thank you, Your Honor.

5 MR. MILLER: Thank you.

6 JUDGE LUTON: Okay. Yes, sir?

7 MR. ZAUNER: Your Honor, one last matter if I may?
8 With regard to witness notification, if a party does not
9 notify someone for cross-examination that another party
10 notifies, is that party then precluded from engaging in cross-
11 examination?

12 JUDGE LUTON: To me that -- no. I've seen some,
13 some judges do that or at least they say they would preclude
14 examination, but I once did that in another place where I
15 worked and I was reversed. It just seems to me that if the
16 witness is here, called by whoever, and a party who didn't
17 call that witness nevertheless has some pertinent or otherwise
18 proper questions to put to the witness, I don't see why the
19 person couldn't be subjected to that, but there's no cross,
20 and I would do it that way.

21 MR. ZAUNER: Thank you.

22 JUDGE LUTON: And I really would rather than just
23 simply saying well, you didn't call them. Therefore, you
24 can't ask them any questions. That's nonsense if that person
25 is sitting in the room.

1 MR. KRAUS: One last housekeeping point, Your Honor.
2 We're going to hand deliver. Mr. Berfield's going to hand
3 deliver. The Bureau I don't think has that in-house capacity.
4 If they'll just notify us --

5 JUDGE LUTON: And then somebody will go by and grab
6 it, I'm sure.

7 MR. KRAUS: -- us, we'll send somebody to get it.

8 JUDGE LUTON: Okay.

9 MR. ZAUNER: How about telephoning?

10 JUDGE LUTON: Okay.

11 MR. KRAUS: Or fax it.

12 JUDGE LUTON: Fax it. All right. Sorry I couldn't
13 clear up the Liz Randolph matter, but we will very shortly.
14 Thank you.

15 (Whereupon, the hearing was adjourned at 1:15 p.m.).
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN RE APPLICATIONS OF EZ COMMUNICATIONS, INC.

Name AND ALLEGHENY COMMUNICATIONS GROUP, INC.

MMSDOCKET NO. 93-88

Docket No.

WASHINGTON, D.C.

Place

OCTOBER 13, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 7 through 138, inclusive, are the true, accurate and complete transcript prepared from the reporting by SOL KRASNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

October 25, 1993

Date

Cheryl L. Phipps
Cheryl L. Phipps, Transcriber
Free State Reporting, Inc.

October 25, 1993

Date

Diane S. Windell
Diane S. Windell, Proofreader
Free State Reporting, Inc.

October 25, 1993

Date

Sol Krasner
Sol Krasner, Reporter
Free State Reporting, Inc.

FREE STATE REPORTING, INC.

Court Reporting Depositions
D.C. Area 261-1982
Balt. & Annap. 974-8947